

## CONFIDENTIALITY OF INFORMATION

The early intervention program consultant and participating agencies must provide you the opportunity to inspect and review any *records* relating to your children which are collected, maintained or used by the early intervention program consultant and/or agency under Part C. The early intervention program consultant or agency must respond to a request without unnecessary delay and before any meeting regarding an *IFSP* or hearing relating to identification, *evaluation*, or placement of your child, and in no case more than 45 days after the request has been made.

The right to inspect and review *records* includes:

- (1) The right to a response from the early intervention program consultant or agency to reasonable requests for explanations and interpretations of the *record*;

- (2) The right to request that the early intervention program consultant or agency provide **records** containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the **records**; and
- (3) The right to have someone representing you inspect and review the **record**.

An early intervention program consultant or agency may presume that you have the authority to inspect and review **records** relating to your child unless it has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation and divorce.

Each **participating agency** and early intervention program consultant shall keep a **record** of parties obtaining access to **early intervention records** collected, obtained, or used under this part (except access by **parents** and authorized employees of the **participating agency** and early intervention program consultant), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the **record**.

If any **record** includes information on more than one child, you have the right to inspect and review only the information relating to your child, or to be informed of that specific information.

Each early intervention program consultant and/or **participating agency** shall provide you, on request, a list of the types and locations of **records** collected, maintained, or used by the agency.

An early intervention program consultant and/or *participating agency* may charge a fee for copies of *records* which are made for *parents* under this part if the fee does not effectively prevent you from exercising your right to inspect and review those *records*. An early intervention program consultant and/or *participating agency* may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in *records* collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the early intervention program consultant or *participating agency* which maintains the information to amend the information.

- (1) The agency or early intervention program consultant decides whether to amend the information in accordance with the request, you will be informed of receipt of the request.
- (2) If the agency or early intervention program consultant decides to refuse to amend the information in accordance with the request, you will be informed of the refusal and be advised of the right to a hearing.

The agency or early intervention program consultant or agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, an early intervention program consultant or agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and will inform you in writing.

- (1) If, as a result of the hearing, the agency or early intervention program consultant decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you will be informed of your right to place in the **records** of your child a statement commenting on the information and setting forth any reasons for disagreeing with the decision of the early intervention program consultant or agency.
- (2) Any explanation placed in the **records** of the child under this section must: (a) be maintained by the early intervention program consultant or agency as part of the **records** of the child as long as the **record** or contested portion (that part of the **record** with which you disagree) is maintained by the early intervention program consultant or agency; and (b) if the **records** of the child or the contested portion is disclosed by the early intervention program consultant or agency to any party, the explanation must also be disclosed to the party.

A hearing held under this section must be conducted according to the procedures under '99.22 of Family Education Rights & Privacy Act (FERPA) (34 CFR Part 99).

Parental consent must be obtained before **personally identifiable** information is: (a) disclosed to anyone other than officials of early intervention program consultants or participating agencies collecting or using information under Part C, subject to paragraph (2) of this section; or (b) used for any purpose other than meeting a requirement under Part C.

Information from your child's **early intervention record** cannot be released to participating agencies without your consent unless authorized to do so under FERPA:

- Each early intervention program consultant and/or ***participating agency*** protects the confidentiality of ***personally identifiable*** information at collection, storage, ***disclosure***, and ***destruction*** stages;
- One official of each early intervention program consultant and/or ***participating agency*** assumes responsibility for insuring the confidentiality of any ***personally identifiable*** information;
- All persons collecting or using ***personally identifiable*** information receive training or instruction regarding South Dakota's policies and procedures under IDEA and FERPA;
- Each early intervention program consultant and/or ***participating agency*** maintains, for public inspection, a current listing of the names and positions of those employees within the early intervention program consultant and/or agency who have access to ***personally identifiable*** information;
- The early intervention program consultant and/or agency informs ***parents*** when ***personally identifiable*** information collected, maintained, or used under this part is no longer needed to provide services to the child; and
- The information is destroyed at the request of the ***parents***. (Permanent ***records*** of the child's name, address, and phone number may be maintained.

If the U.S. Department of Education or its authorized representatives collects any ***personally identifiable*** information regarding children eligible under this part which is not subject to the Privacy Act of 1974, the U.S. Secretary of Education applies the requirements of the Statute (5 USC section 552A) and the regulations implementing those provisions.